In the Supreme Court

OF THE

United States

OCTOBER TERM, 1942

No. 494

S. C. BIGELOW, as Receiver of Virginia & Truckee Railway (a corporation), and Virginia-Truckee Transit Co. (a corporation),

Petitioner,

vs.

H. A. ANDERSON, Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Circuit and BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

The petition of S. C. Bigelow, receiver above named, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause on July 23, 1942 (R. 148-149) reversing the judgment and decree of the District Court of the United States for the District of Nevada (R. 112-115) and respectfully shows:

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

On June 10, 1940, petitioner, as receiver of Virginia & Truckee Railway and Virginia-Truckee Transit Company, Nevada corporations (herein called the railway company and the transit company respectively) filed in the trial court his petition for instructions and for a restraining order (R. 2-14), in which it is alleged that acting under the court's appointment as such receiver he is operating as a common carrier of passengers, freight and mail in interstate and intrastate commerce; that the respondent H. A. Anderson, as president and business agent of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada (herein called respondent union) had presented to petitioner for his execution certain wage and working agreements (R. 15-24) which contemplated the appointment of respondent union as the authorized bargaining agent of petitioner's truck drivers (R. 4), and that

respondent union had informed petitioner that unless said agreements were so executed on or before June 11, 1940, strikes would be called among petitioner's employees and his places of business picketed by respondent union (R. 4-5). That in the situation thus presented petitioner sought definite instructions from the trial court as to whether in his capacity as receiver he had authority to sign such agreements, and pending determination of the issue presented asked that the respondent union be enjoined from interfering with petitioner's operations (R. 8-14).

The trial court having issued its temporary restraining order as prayed for (R. 27-33), and having thereafter denied respondent union's motion to dissolve said order (R. 34-38), respondent union answered said petition (R. 48-53); and upon the issues thus joined trial was had on the merits, and said district court thereupon rendered its opinion and decision holding that the Interstate Commerce Commission has jurisdiction to regulate the hours of labor of petitioner's truck drivers, and that as to other matters respecting said employees, (i.e., their labor relations with petitioner) the provisions of the Railway Labor Act are applicable, and ordered that petitioner have a permanent injunction as prayed (R. 82-87; Vol. 31 Fed. Supp. 35). Findings were thereupon signed (R. 105-111), and the trial court's final judgment and decree entered in accordance therewith (R. 112-115).

The respondent union appealed from said final judgment and decree on the merits on May 21, 1941

(R. 115). Said appeal was heard before the Circuit Court of Appeals for the Ninth Circuit which, by a divided court, handed down its decision on July 23, 1942, reversing the judgment and decree of the district court on the merits, and holding that the district court was deprived of jurisdiction to issue said injunction by the Norris-La Guardia Act, and that the receiver's petition should be dismissed (R. 133-142; Vol. ..... Fed. Rep. (2d) .....). A dissenting opinion was filed on the same day (R. 142-148; Vol. ..... Fed. Rep. (2d) .....). The decree of that court to which this petition for certiorari is directed was signed in the Circuit Court of Appeals on July 23, 1942 (R. 148-149). Petitioner duly filed his petition for rehearing on August 19, 1942, which was denied on August 25, 1942 (R. 150). Order staying the mandate was filed September 8, 1942.

The pertinent facts in this proceeding are:

The railway company, a steam railroad engaged in transporting freight and passengers in both interstate and intrastate commerce, obtained on August 18, 1939, a franchise permitting it to haul over-the-highways, by motor truck the less-than-carload freight which immediately prior thereto had been hauled for its account by its wholly owned subsidiary, the transit company. The railway company inauguarated this truck service handling less-carload freight on September 21, 1939; and thereupon, and particularly after June 1, 1940, the transit company ceased to transport any freight, and confined its services to the transportation of passengers, express and mail (R. 57). The

railway company maintains through joint rates with Southern Pacific Company and Western Pacific Railway Company. By far the greater proportion of its business is interstate in character; 98% to 99% of its carload business, and about 66⅔% of its less-than-carload business being interstate; and these figures do not include outbound interstate freight originating in Nevada. In addition to passengers and freight the railway company also handles United States mail (R. 55). In its steam-rail operations the railway company employs 30 to 35 men (R. 55); in the operation of its over-the-highway truck service, it handles practically all classes of less-than-carload freight, and employs 16 or 17 men, including 4 regular truck drivers and 1 extra truck driver. All of these employees are carried on the railway company's payroll, and deductions are made from their paychecks under the provisions of the Railroad Retirement Act (R. 55-56).

The railway company's purpose in initiating the handling of less-carload freight by truck over the highways was to reduce operating expenses incident to the rail transportation of such freight, and to place its service on a parity with that of competing carriers, by improving service to its patrons (R. 56).

In April, 1940, respondent union presented to petitioner two forms of contract setting forth proposed terms and conditions of employment for the 4 or 5 truck drivers who were members of said union and in petitioner's employ (R. 58-59). Petitioner's relations with all of said truck drivers are friendly, and they have no grievances against petitioner (R. 72, 73, 75).

Efforts to negotiate as to these proposed contracts failed (R. 58-59); and respondent union delivered what was in effect an ultimatum to petitioner, giving him until a day certain to sign the proposed agreements (Exhibit "A" and Exhibit "B", R. 15-24), or petitioner's drivers would be taken off the job (R. 78). Unless an agreement could be concluded by ordinary persuasive methods, respondent union would resort to strike, picketing and boycott (R. 61). Although the agreements as presented were not signed by petitioner he was at all times ready and willing under proper instructions from the court to negotiate an agreement with the duly authorized bargaining agency (R. 78-79); but he had been advised by his attorney that negotiations for an agreement should be carried on under the terms of the Railway Labor Act, and not under the Wagner Act (R. 79-81).

II.

QUESTIONS PRESENTED.

A.

When a steam railroad common carrier engages, for its own account and as an integral and component part of its transportation activity, in the transportation of interstate and intrastate freight by its own motor trucks as a substitute for previously conducted rail transportation of such freight, is such rail carrier governed, in its labor relations with the employees who drive its said trucks, by the Railway Labor Act (45 U. S. Code 151-163), or by the Norris-La Guardia

Act (29 U. S. Code 101-115) and the National Labor Relations ("Wagner") Act (29 U. S. Code 151-166)?

B.

Does Section 2 (Fifth) of the Railway Labor Act (45 U. S. Code 152, Fifth), which forbids railroad carriers from requiring their employees to sign agreements to join or not to join a labor organization, apply with equal force with respect to all employees of such carriers who are actually engaged in the operation of vehicles of transportation, whether on rail lines or over the highways?

C.

Is any distinction to be drawn, under the Railway Labor Act, the Railroad Retirement Act, and the Railroad Unemployment Insurance Act, between a railroad carrier's employees who handle and transport freight in interstate and intrastate commerce by the instrumentalities of steam-railway service, and other employees of the same carrier who are engaged as truck drivers in the transportation of like freight by the use of motor vehicles in over-the-highway carriage, in either the handling and settlement of labor disputes, under the Railway Labor Act, or in the enjoyment of employee rights and privileges under the Railroad Retirement and Unemployment Insurance Acts?

III.

REASONS FOR GRANTING THE WRIT.

1. The questions involved in this case are governed by federal law, and have not been, but should be, settled by this court.

This case is primarily one of first impression, although related questions which bear upon the issues have been determined by this Honorable Court and by Appellate Courts in other jurisdictions, as appears in the supporting brief accompanying this petition.

A review of the foregoing questions by this court will set at rest much doubt, avoid a multiplicity of suits, and promote orderly administration of the several labor acts governing employer-employee relations of both carriers and industrialists engaged in interstate commerce.

It is reasonable to apprehend that in the ordinary course of events the questions here presented will be frequently raised, by reason of the recently developed and increasing tendency of railroad companies to expand their operations so as to furnish their patrons with truck service both to points off-rail, and to rail points where deemed necessary to meet the competition of independent truck lines. Hence a final decision by this Honorable Court, establishing a uniform and reasonable rule, is of great importance to the general public, as the decree of the Circuit Court if allowed to stand, will have far-reaching effect, and result in uncertainty and confusion among employers and employees alike whose activities are concerned with transporting over-the-highway interstate freight by

motor vehicle as an integrated part of railroad common-carrier operations.

Furthermore, if the decision of the Circuit Court of Appeals is allowed to stand, it will require a reversal of uniform and long-continued departmental constructions placed upon provisions of the Interstate Commerce Act and of the Railroad Retirement Act by the governmental bodies administering those respective acts. For that reason it is respectfully submitted that the case at bar is within the class of cases over which this Honorable Court should exercise its powers of supervisory review.

2. The decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case is believed to be in conflict with the decisions of this Honorable Court, in the following cases:

Virginian Ry. Co. v. System Federation No. 40, 300 U. S. 515, 81 L. Ed. 789, in which it was held that the requirements of Sec. 9 of the Norris-La Guardia Act, in relation to restraining orders, do not apply to an injunction issued to enforce the collective bargaining provisions of the Railway Labor Act, and that the Norris-La Guardia Act could affect the decree in that case only in so far as its provisions were not in conflict with pertinent provisions of the Railway Labor Act;

Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548, 74 L. Ed. 1034, in which it was held that an injunction should issue to compel the observance of the duties and obligations imposed by the Railway Labor Act.

American Truck Association v. U. S. (310 U. S. 534, 84 L. Ed. 1345; reh. den. 311 U. S. 724, 85 L. Ed. 472), wherein this court upheld the authority of the Interstate Commerce Commission to regulate qualifications and minimum hours of service of those employees of carriers by motor vehicles whose duties affect the safety of operation, as vehicles regulated by the Motor Carrier Act of 1935.

The decision in the instant case is at variance with departmental constructions placed upon pertinent provisions of the Railroad Retirement Act under rulings promulgated by the Railroad Retirement Board in the following matters:

Blue Line Transfer Co. (Baltimore & Ohio RR. Co.; Vol. 1, Railroad Retirement Board Law Bulletin, 99-102);

Texas and Pacific Motor Transport Co. (Id. 80);

Northern Pacific Transport Co. (Id. 87);

Pacific Motor Transportation Co. (Id. 91);

Evansville and Ohio Valley Railroad Co. (Id. 108);

Buffalo, Rochester and Pittsburgh Warehouse Inc. (Id. 112);

Southern Pacific Transport Co. (Texas, The Southern Pacific Transport Co. of Louisiana, Inc.) (Id. 115);

Missouri Pacific Freight Transport Co. (Vol. 2, R.R. Law Bull., 43-44).

IV.

STATUTES INVOLVED.

Norris-LaGuardia Act (29 U. S. C. A. 1941 Supp., Chap. 6, Secs, 101, 102, 104 (a, b, c. d, e, f, g, h, i), 107 (a, b, c, d, e), 108, 113 (a, c);

National Labor Relations Act (29 U. S. C. A. 1941 Supp., Chap. 7, Secs. 151, 152 (2, 3), 157, 158 (1, 3, 5), 159 (a, b, c), 160 (a, b, e, f, g, h, i), 163);

Interstate Commerce Act (Chap. 1, 49 U. S. C. A. 11, Sec. 1(3); and Chap. 1, 49 U. S. C. A., 1941 Supp., p. 3);

Railway Labor Act (45 U. S. C. A., 1941 Supp., Chap. 8, Secs. 151 (First), (Fifth), Sec. 151A, 152 (First-Sixth), Sec. 153 (a, b, i, l);

Railroad Retirement Act (45 U. S. C. A., 1941 Supp., Sec. 228A (a, b);

Railroad Unemployment Insurance Act (45 U. S. C. A., 1941 Supp., Sec. 351 (a, b, d).

Your petitioner attaches hereto his brief in support of this petition, which is followed by an appendix quoting the pertinent sections of the above designated statutes.

Wherefore: your petitioner prays that a Writ of Certiorari may be issued out of and under the seal of this honorable court, directed to the United States Circuit Court of Appeals for the Ninth Circuit commanding that court to certify and to send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, "No. 9886, H. A. Anderson,

Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada, Appellant, vs. S. C. Bigelow, as Receiver of Virginia & Truckee Railway (a corporation) and Virginia-Truckee Transit Company (a corporation) Appellee," and that said decree of said United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this honorable court and that your petitioner may have such other and further relief as to this honorable court may seem meet and just.

Dated, San Francisco, California,
October 21, 1942.

HENLEY C. BOOTH,
BURTON MASON,
Attorneys for Petitioner.

DUNCAN A. MCLEOD,
WALTER ROWSON,
Of Counsel for Petitioner.

CERTIFICATE OF COUNSEL.

I certify that I have examined the foregoing Petition, that in my opinion it is well founded and entitled to the favorable consideration of the court and that it is not filed for the purpose of delay.

Dated San Francisco, California,
October 21, 1942.

BURTON MASON,
Attorney for Petitioner.

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No.

S. C. BIGELOW, as Receiver of Virginia & Truckee Railway (a corporation), and Virginia-Truckee Transit Co. (a corporation),

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H. A. ANDERSON, Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE RAILWAY LABOR ACT APPLIES TO THE RAILWAY COMPANY, AND TO PETITIONER AS ITS RECEIVER, AND CONTROLS THEIR LABOR RELATIONSHIPS WITH ALL THEIR EMPLOYEES, INCLUDING THOSE ENGAGED IN DRIVING TRUCKS OPERATED BY PETITIONER ON THE PUBLIC HIGHWAYS AS AN ESSENTIAL AND INTEGRAL PART OF THE RAILWAY COMPANY'S COMMON CARRIER OPERATIONS.

The essential and basic question in this case is whether the railway company, and the petitioner as its receiver, are controlled and governed as to their labor relationships with the employees involved in this case by the Railway Labor Act (45 U. S. Code 151-163) or the National Labor Relations Act (29 U. S. Code Secs. 151-166).

The record establishes without challenge that the railway company is a common carrier by steam railroad engaged in the transportation of passengers and property in interstate commerce (R. 55-56). It is, therefore, a "carrier by railroad subject to Part I of the Interstate Commerce Act" (Railway Labor Act, Sec. 1, First), because squarely within the coverage of said Part I (45 U. S. Code, Sec. 1, paras. (1)(a), (3)(a)).

The employees involved in the case are likewise concededly employed directly by the railway company and carried on its payroll; as such, they are "subject to its continuing authority to supervise and direct the manner of the rendition of their service" (R. 56, 60, 67-68, 71-75).

There would thus seem to be no room for doubt as to the applicability of the Railway Labor Act; but the

Circuit Court nevertheless concluded that Act not to be applicable, because, as it said, the highway operations of the railway company were not shown or found to be connected with the rail operations (R. 134); nor was it shown, according to the Circuit Court (R. 138), that any of the truck men were engaged in any service, terminal, pickup or otherwise, "incidental to rail traffic." The Circuit Court concluded, that as to these truck drivers petitioner and the railway company were simply functioning as a common carrier by motor vehicle, not subject to Part I of the Interstate Commerce Act and, therefore, not capable of being classified as a "carrier" (i. e., employer) subject to the Railway Labor Act. The court therefore held that the National Labor Relations Act applied, and that the injunction granted by the District Court came within the prohibitions of the Norris-La Guardia Act.

The Circuit Court's conclusion is predicated on both a misunderstanding of the facts, and a misconstruction and misinterpretation of the applicable law.

Dealing first with the facts: The unchallenged evidence leaves no doubt that the motor-truck operations of the railway company, in which the employees involved were engaged, were conducted directly by that company as an essential and integral part of its entire common-carrier operation as a steam railroad common carrier engaged in interstate commerce (R. 55-57). Petitioner's testimony established that the trucking service was initiated for the purpose of handling less-carload freight (R. 56), and that only such less-carload freight (at least two-thirds of which

was interstate (R. 55), was handled by the railway trucks (R. 56-57); that the service was initiated to reduce expense, as against the more costly method of handling less-carload freight on the railway company's steam rail lines (R. 56); that a further purpose was to improve the service to the railway company's patrons and to place the company upon a competitive parity with truck operators in the same territory (R. 56); that the company continues to handle passengers and carload freight by rail as it had previously done (R. 55).

The trial court, in response to this testimony, duly found (its Finding No. VI, R. 108) that the petitioner was carrying on the trucking "as part of the operations of the Virginia & Truckee Railway". This finding was based upon proposed findings of fact submitted to the court by the petitioner (Proposed Finding No. XII, R. 93; Proposed Finding No. XVIII, R. 96), in which substantially similar statements were made. Although the respondent challenged many of the proposed findings submitted by petitioner (R. 99-105), it did not challenge either of these two; nor did respondent in his statement of points intended to be relied upon on his appeal (R. 125-128) question or challenge Finding No. VI of the District Court. There is, therefore, both ample evidence and an unchallenged finding to the effect that the trucking in which the involved employees were engaged was carried on as a part of the operations of the railway company; and, as the evidence shows, it was merely a substituted service, instituted in order to reduce the railway com-

pany's expenses and to improve the service to its patrons.

Second, as to the law: The narrow interpretation given to the Railway Labor Act by the Circuit Court conflicts with the express language and reasonable interpretation to be given to that statute and with the controlling decision of this court, construing and applying that language, rendered in

Virginian Ry. Co. v. System Federation (1937), 300 U. S. 515, 81 L. ed. 789.

The construction of the Railway Labor Act followed by the Circuit Court is erroneous in that it assumes that a single employer can be, in effect, subdivided into two entities, one of which is subject to the Railway Labor Act, while the other is subject to some other statute. There is nothing in the act which justifies such a construction. If an employer is a common carrier subject to Part I of the Interstate Commerce Act, then it is, by that very fact, subject to the Railway Labor Act, as to all of its employees who are engaged in or in any way connected with its transportation activities. No exception is made in the act as between employees actually engaged in rail transportion and those whose activities are related to such transportation. The language of paragraph First of Section 1 contains an exception, the effect of which is to remove from the coverage of the act a subsidiary of a railroad common carrier if that subsidiary is engaged in trucking service; but this exemption extends only to a subsidiary, and does not exclude trucking service operated directly—not through a sub-

sidiary—by a common carrier subject to Part I of the Interstate Commerce Act. By the very fact that the exemption is extended only to subsidiaries, emphasis is given to the non-exemption, even as to trucking service, of carriers who are directly subject to Part I of the Interstate Commerce Act.

In the *Virginian Case, supra,* the essential question of the coverage of the Railway Labor Act was substantially identical with that presented here. It was there contended by the carrier that, as to its "back-shop employees" and its labor relations with them, the Railway Labor Act did not apply, because the duties of those employees had no direct relationship to interstate transportation. It appeared that such employees were not within the scope of the Federal Employers' Liability Act, as it read at that time (1937); but this Court nevertheless found no difficulty in concluding that the Railway Labor Act was fully applicable to them. The court said (300 U. S., at p. 556):

> "The activities in which these employees are engaged have such a relation to the other confessedly interstate activities of the petitioner that they are to be regarded as a part of them. All taken together fall within the power of Congress over interstate commerce. *Baltimore & Ohio R. Co. v. Interstate Commerce Comm'n,* 221 U. S. 612, 619; cf. *Pedersen v. Delaware, L. & W. R. Co.,* 229 U. S. 146, 151. Both courts below have found that interruption by strikes of the back shop employees, if more than temporary, would seriously cripple petitioner's interstate transportation. The relation of the back shop to transportation is such that a strike of petitioner's em-

> ployees there, quite apart from the likelihood of its spreading to the operating department, would subject petitioner to the danger, substantial, though possibly indefinable in its extent, of interruption of the transportation service. The cause is not remote from the effect. The relation between them is not tenuous. The effect on commerce cannot be regarded as negligible."

So, in the present case, it is quite apparent that a strike of the petitioner's truck employees would have serious effects upon petitioner's rail-line operations, and might cause that service to be interrupted. Certainly it could not be said that the relationship between the common-carrier truck operations and the rail-line operations of the railway company was tenuous or the connection remote, or that the effect on commerce of the interruption of the truck-line operations would be negligible. On the contrary, the two operations were and are closely connected, are complementary to each other, and an interruption of one would be bound to affect the other seriously and continuously.

It has been suggested and may be again suggested that if this truck-line operation were conducted by a subsidiary of the railway company the Railway Labor Act would not apply; hence the mere fact that it is conducted directly by the railway company does not render the Act applicable. That suggestion finds a ready answer in the fact that the Railway Labor Act itself contemplates that it will not apply to a trucking subsidiary of a carrier, but no such exception is pro-

vided for a rail carrier which directly conducts truck operations; but is also conclusively answered by the language of this court at page 557 of the opinion in the *Virginian Case*. The court there said:

> "It is no answer, as petitioner suggests, that it could close its back shops and turn over the repair work to independent contractors. Whether the railroad should do its repair work in its own shops, or in those of another, is a question of railroad management. It is petitioner's determination to make its own repairs which has brought its relations with shop employees within the purview of the Railway Labor Act."

So, to paraphrase this language, it was within the railway company's managerial discretion to operate its own trucks as a part of its general transportation service, and it did so; that determination brought its relations with its employees engaged in the trucking service within the purview of the Railway Labor Act.

The Circuit Court was apparently influenced, to some extent, in reaching its erroneous conclusion as to the non-application of the Railway Labor Act by the fact that the Interstate Commerce Commission is given power by the provisions of Section 204(a) of Part II of the Interstate Commerce Act, as interpreted by this court in *United States v. American Trucking Associations,* 310 U. S. 534, 84 L. Ed. 1345, to regulate the maximum hours of these particular employees. But the authority thus conferred upon the Commission does not affect the rights, duties and obligations of the parties under the Railway Labor Act;

particularly their duty to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions (including hours of service) as provided by the Railway Labor Act. For many years, the maximum hours and certain other working conditions of steam railroad companies and their employees engaged in handling trains have been directly regulated by Congress through the so-called Hours and Service Act (45 U. S. Code 61-66); but it has never been held or suggested that this statute, which is completely analogous to the maximum-hours regulations of motor-truck drivers promulgated by the Interstate Commerce Commission, in any way supersedes or affects the rights and obligations of steam railroads and their employees under the Railway Labor Act.

The Circuit Court erred further in ignoring, as if without significance, the fact that these truck drivers, and petitioner (or the railway company) as their employer, are within the coverage of the Railroad Retirement and Railroad Unemployment Compensation Acts. Numerous decisions have been rendered by the Railroad Retirement Board holding that when trucking operations are in fact conducted by a railroad, as a department of the railroad, both the employer and the employees are within the scope of the Retirement-ment and Unemployment Compensation Acts.

Blue Line Transfer;
Baltimore and Ohio Railroad Company;
(Vol. 1, Railroad Retirement Board Bulletin, pp. 99-102.)

Similar decisions were issued covering the following companies:

Texas and Pacific Motor Transport Company;
Northern Pacific Transport Company;
Pacific Motor Transport Company;
Evansville & Ohio Valley Railway Company;
Buffalo, Rochester & Pittsburgh Warehouse, Inc.;
The Southern Pacific Transport Company (Texas);
The Southern Pacific Transport Company of Louisiana, Inc.

The essential importance of these rulings lies in the fact that the coverage clauses of the Railroad Retirement Act and Railroad Unemployment Insurance Act are practically identical, in so far as concerns the employers subject to those statutes, with the corresponding clause of the Railway Labor Act. A company which, as a matter of law, is an employer subject to either of the other Acts, is likewise a "carrier" (i.e., employer) within the meaning of the Railway Labor Act.

We do not urge that these rulings of the Railroad Retirement Board are conclusive upon this court, but they do represent a consistent course of interpretation of wholly analogous provisions, rendered by the administrative tribunal charged with the administration of the statutes in question; and in the absence of a contrary ruling they are entitled to great weight.

U. S. v. Healey, 160 U. S. 136, 40 L. ed. 369;

National Lead Co. v. U. S., 252 U. S. 140, 64 L. ed. 496;
U. S. v. Jackson, 280 U. S. 183, 74 L. ed. 361;
Mintz v. Baldwin, 289 U. S. 346, 77 L. ed. 1245;
Union Stock Yard etc. Co. v. U. S., 308 U. S. 213, 84 L. ed. 198.

II.

THE INJUNCTION GRANTED BY THE DISTRICT COURT WAS PROPER AS A MEANS OF ENFORCING THE OBLIGATIONS IMPOSED BY THE RAILWAY LABOR ACT.

The Railway Labor Act imposes upon employers and employees certain mutual obligations. It is primarily the duty of both employers and employee representatives to exert every reasonable effort to make and maintain collective bargaining agreements, and to settle all disputes, so as to avoid any interruption to commerce or the operation of any carrier growing out of any such dispute (Railway Labor Act, Sec. 2, para. First); to consider and if possible to decide all disputes in conference (para. Second); to give notice of a desire to confer in the event of a dispute, and to hold such conference upon receiving notice (para. Sixth). Where changes in agreements (which, of course, would include a proposed new agreement, as in the present case) affecting rates of pay, rules or working conditions are desired, the party making the proposal must give at least 30 days' written notice of the intended change and thereafter conferences must be held pursuant to such notice. If the parties cannot

agree and the services of the Mediation Board are invoked or proffered, or if the conferences terminate without mediation being invoked, at least 10 days must elapse before either party can take any further action (Railway Labor Act, Sec. 6). If mediation is invoked, the matter must be held *in statu quo* until mediation terminates (Sec. 5, First, Second). Finally, if the dispute is still unsettled and threatens to culminate in a strike which would interrupt essential transportation service, an emergency board may be appointed by the President, and, pending its investigation and report, neither employer nor employees may take any further steps toward changing the existing status (Sec. 10).

All of these provisions were designed, as it has been said, to insure that the peaceful processes of negotiation, mediation and arbitration, together with a final cooling-off period after all of these had failed, would intervene between the initiation of a dispute and the final resort to strike or threat thereof as a means of settlement. And the obligation equally rests, not only upon the employer, but also upon the employees, to observe all of these requirements of the Act.

There is no contention—indeed there is no suggestion—that the employees who threatened to strike, to picket and otherwise to resort to "economic force" to impose their will upon the petitioner as an employer, have ever undertaken any of the steps required by the Railway Labor Act, or that they contemplated so doing. In effect, as the District Court found (R. 106-

107), and as the Circuit Court said in its opinion (R. 135), the respondent, as the representative of the employees, notified petitioner that unless his proposals were accepted by a certain day a strike would be called and the receiver's business picketed and boycotted.

There was no question, apparently, in the mind of the Circuit Court, and in the light of this court's controlling decisions there can be no question, that if the Railway Labor Act is applicable the injunction granted by the District Court was and is proper and should be affirmed. In this behalf, the Circuit Court said in its opinion (R. 136):

> "There is no question that the injunctive decree is valid if the Railway Labor Act controls, for none of the requirements which are conditions precedent to the right of rail carrier employees to strike were satisfied."

The instant case, in this respect, as in others, falls squarely within the principles followed in the *Virginian Case, supra.* There this court sustained an injunction granted by the District Court against an employer's refusal to negotiate with the chosen representative of its employees, with respect to their demands for an agreement covering wages, hours and working conditions, and its threat to negotiate with some other purported representative of some or all of the particular classes of its employees involved in the case. The court squarely held that the mandatory injunction was an appropriate remedy to compel the carrier to comply with its statutory obligations; and expressly declared, in answer to objection, that (300 U. S. 563):

> "It suffices to say that the Norris-La Guardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Sec. 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-La Guardia Act."

See, also,

Railway Employees' Assn. v. Atlanta B. & C. R. Co. (D. C., Ga., 1938), 22 F. Supp. 510.

Of course, if injunction will lie to compel an employer, at the suit of employees, to fulfill its statutory obligation, it will equally lie to compel the performance by employees of their obligations under the same statute. The obligations imposed by the Railway Labor Act rest alike upon both employers and employees: the very essence of the statute consists of this mutual duty to meet and confer in the effort to arrive at peaceful settlements; to "make and maintain" collectively-bargained agreements, and otherwise to conform to the processes provided therein for the orderly settlement of disputes. Compare:

Texas & N. O. R. Co. v. Ry. Clerks, 281 U. S. 548, 74 L. ed. 1034,

in which this court declared (at p. 567), in the course of a discussion of the Railway Labor Act of 1926 (all the principal features of which are retained in the 1934 statute):

> "It is thus apparent that Congress, * * * while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between com-

mon carriers and their employees, thought it necessary to impose, *and did impose, certain definite obligations enforceable by judicial proceedings.*" (Emphasis ours.)

We ask the court also to note the recent decision in *Delaware & H. R. Corp. v. Williams, et al.* (C. C. A. 7th, 1942), 129 F. (2d) 11, in which, upon complaint of a carrier subject to the Railway Labor Act, the Circuit Court enjoined the representatives of the labor organizations constituting the labor membership of the First Division of the National Railroad Adjustment Board, who were threatening, in disregard of the orderly procedure provided in the Act for the settlement of disputes, to permit such disputes to be withdrawn from the First Division, to be subsequently resubmitted by the employees, although the disputes had practically reached the stage of final determination by the Division. The Circuit Court thus again sustained the principle that compliance with the obligations of the Railway Labor Act may be effectuated, if need be, by mandatory judicial process.

The injunction granted by the District Court in the instant case was proper, not only because of the respondent's failure to conform to the orderly procedure provided by the Railway Labor Act; it was particularly appropriate because the purported "agreement" tendered to, and proposed to be forced upon the petitioner by the duress of strike and boycott, provides for a "closed shop": i.e., that every employee subject to its terms must be, or become, a member of the re-

spondent union in order to retain his job (R. 16-17). Paragraphs Fourth and Fifth of Section 2 of the Act expressly outlaw the "closed shop" among employees subject to the Act.

CONCLUSION.

Because of the demonstrated errors of the Circuit Court of Appeal in rendering its opinion and decision in the instant case, and because of the importance of a proper decision in this case, this court should exercise its supervisory power of review by granting the writ herein applied for, and thereafter, upon review of the case on the merits, should reverse the Circuit Court's decision and affirm the decision of the District Court.

Dated, San Francisco, California,
October 21, 1942.

Respectfully submitted,
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(Appendices A to G Follow.)

Appendix A

LABOR—NORRIS-LA GUARDIA ACT.

(Tit. 29 U.S.C.A. 1941 P.P., Chap. 6, Secs. 101 et seq.)

Sec. 101. Issuance of restraining orders and injunctions; limitation; public policy.

No court of the United States, as defined in sections 101-115 of this title shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. Mar. 23, 1932, c. 90, sec. 1, 47 Stat. 70.

Sec. 102. Public policy in labor matters declared.

In the interpretation of sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise

actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Mar. 23, 1932, c. 90, sec. 2, 47 Stat. 70.)

Sec. 104. Enumeration of specific acts not subject to restaining orders or injunctions. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization,

regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. (Mar. 23, 1932, c. 90, sec. 4, 47 Stat. 70.)

Sec. 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings.

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect:

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organizations making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. * * *

Sec. 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (Mar. 23, 1932, c. 90, sec. 8, 47 Stat. 72.)

Sec. 113. Definitions of terms and words used in chapter. When used in sections 101-115 of this title and for the purposes of such sections:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who

are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Appendix B

LABOR—NATIONAL LABOR RELATIONS ACT.

(Tit. 29 U.S.C.A. 1941 P.P., Chap. 7, Secs. 151 et seq.)

Sec. 151. Findings and declaration of policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strike or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

* * * * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-

organization, and designation of representatives of their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, c. 372, sec. 1, 49 Stat. 449.)

Sec. 152. Definitions.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151 to 163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Sec. 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain

collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (July 5, 1935, c. 372, sec. 7, 49 Stat. 452.)

Sec. 158. Unfair labor practices by employer defined.

It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in sections 151-166 of this title, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provi-

sions of section 159(a) of this title. (July 5, 1935, c. 372, sec. 8, 49 Stat. 452.)

Sec. 159. Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of sections 151-166 of this title, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for

an appropriate hearing upon due notice, either in conjunction with a proceeding under section 160 of this title or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

Sec. 160. Prevention of unfair labor practices.

(a) Powers of Board generally. The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer

to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(e) Petition to court for enforcement of order; proceedings; review of judgment. The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the district court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall

have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board.

No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final,

except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

(f) Review of final order of Board on petition to court. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as

so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) Institution of court proceedings as stay of Board's order. The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of this title. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of this title.

(i) Expeditious hearings on petitions. Petitions filed under sections 151-166 of this title shall be heard expeditiously, and if possible within ten days after they have been docketed. (July 5, 1935, c. 372, sec. 10, 49 Stat. 453; June 25, 1936, c. 804, 49 Stat. 1921.)

Sec. 163. Right to strike preserved.

Nothing in sections 151-166 of this title shall be construed so as to interfere with or impede or diminish in any way the right to strike. (July 5, 1935, c. 372, sec. 13, 49 Stat. 457.)

Appendix C

INTERSTATE COMMERCE ACT. (Chapter 1—Rail etc. Carriers.)

(Tit. 49 U.S.C.A. p. 11.)

Sec. 1. (3) Definitions. The term "common carrier" as used in this chapter shall include all pipe line companies; telegraph, telephone, and cable companies operating by wire or wireless; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation or transmission as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this chapter it shall be held to mean "common carrier". The term "railroad" as used in this chapter shall include all bridges, car floats, lighter, and ferries used by or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this chapter shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration

or icing, storage, and handling of property transported.

National transportation policy. Act Sept. 18, 1940, c. 722, Title I, sec. 1, 54 Stat. 899, amended the Interstate Commerce Act by inserting before Part I thereof (Chapter 1 of this title) the following provision entitled "National Transportation Policy"; "It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act (chapters 1, 8, and 12 of this title), so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices, to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service and of the national defense. All of the provisions of this Act (chapters 1, 8, and 12 of this title) shall be administered and enforced with a view to carrying out the above declaration of policy."

(Interstate Commerce Act, Ch. 1 Tit. 49 U.S.C.A. 1941 P.P. 3.)

Appendix D

RAILWAY LABOR ACT.

(Tit. 45 U.S.C.A. 1941 P.P. Chap. 8, Secs. 151 et seq.)

Sec. 151. Definitions; "Railway Labor Act".

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by

electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of

coal not beyond the mine tipple, or the loading of coal at the tipple.

Act Aug. 13, 1940, c. 664, 54 Stat. 785, specifically amended section 1532 of Title 26 and sections 151, 215, 228a, 261, and 351 of Title 45, by redefining the terms "employer", "employee", and "carrier". In its report on the bill, the Senate committee approved the policy that coal-mining activities of railroads and their subsidiaries for the purpose of railroad operations, "whether conducted directly by carriers or by subsidiaries of carriers, should for purposes of a social-insurance program and for purposes of labor relations be covered by the system of laws applicable to coal-mining generally rather than the system of laws applicable to the railroad industry". The committee accordingly recommended the enactment of the bill "so as to exclude coal-mining operations from the acts covering the railroad industry * * *"

(Railway Labor Act, Ch. 8 Tit. 45 USCA 1941 P.P. notes p. 239.)

Section 151A. General purposes.

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly set-

tlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. (May 20, 1926, c. 347, sec. 2, 44 Stat. 577, as amended June 21, 1934, c. 691, sec. 2, 48 Stat. 1186.)

Sec. 152. General duties.

First. Duty of carriers and employees to settle disputes.

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives.

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives.

* * * * * * * *

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden.

Fifth. Agreements to join or not to join labor organizations forbidden.

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements.

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the

receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

* * * * * * * *

Sec. 153. National Railroad Adjustment Board.

First. Establishment; composition; powers and duties; divisions; hearings and awards.

There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this chapter.

(Sub-paragraphs b, c, d, e, f and g prescribe the method of selecting representatives on the Adjustment Board, and for their compensation.)

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and desig-

nated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out

of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

Appendix E

RAILROAD RETIREMENT ACT.

(Tit. 45 USCA, 1941 Cum. Supp., Secs. 228a et seq., pp. 285 et seq.)

"Sec. 228a. Definitions.

For the purposes of sections 228-228r of this title,

(a) The term 'employer' means any carrier (as defined in subsection (m) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment, or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: Provided, however, That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or

upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term 'employee' means (1) any individual in the service of one or more employers for compensation, (2) any individual who is in the employment relation to one or more employers, and (3) an employee representative.

The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

Appendix F

RAILROAD UNEMPLOYMENT INSURANCE ACT.

(Tit. 45 USCA, 1941 Cum. Supp., Secs. 351 et seq., pp. 309 et seq.)

"Sec. 351. Definitions.

For the purposes of this chapter, except when used in amending the provisions of other Acts:

(a) The term 'employer' means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: Provided, however, That the term 'employer' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

The term 'employer' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term 'carrier' means an express company, sleeping-car company, or carrier by railroad, subject to chapter 1 of Title 49.

(d) The term 'employee' (except when used in phrases establishing a different meaning) means any individual who is or has been (i) in the service of one or more employers for compensation, or (ii) an employee representative.

The term 'employee' shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple."

Appendix G

Jan. 26-29, Feb. 2-5-8-10, 1926.
Statement of

Donald R. Richberg, Chicago, Ill.
Counsel for the Organized Railway Employees.

Hearings on H. R. 7180 (similar to Railway Labor Act) before the Committee on Interstate and Foreign Commerce of the House.

pp. 38-42.
Jan. 27, 1926.

The Chairman. Mr. Fredericks.

Mr. Fredericks. I take it from your address yesterday, Mr. Richberg, that you are very familiar with the negotiations out of which this proposed bill grew. And in running over it here I notice on page 7, beginning on line 4, a provision which seems to take the entire matter outside of the bill. Is that the intent and purpose of that section?

Mr. Richberg. No, Mr. Fredericks. The purpose of this section is not to take the entire matter out from under the purview of this legislation, but merely that portion of the industrial relations which is to be settled by the parties themselves if they are able. In other words, conferences and adjustment.

Mr. Fredericks. Well, if they settle it by themselves, of course that ends it.

Mr. Richberg. Yes.

Mr. Fredericks. There is no farther to go.

Mr. Richberg. And that is the purpose of this provision. May I point this out. This bill provides that,

for example, where there is a dispute and a party applies for conference, then within ten days after receipt of a notice of a desire to confer a time and place shall be specified. There is a particular provision there, "That nothing in this paragraph shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties."

In other words, there is a specific example where it is not intended to arbitrarily require these provisions to be made if the parties have an agreement otherwise, but in default of any agreement the law provides for how a conference should be organized. Now that is the same thought which is in this provision, because in providing for adjustment boards the statement is made in the bill that they shall be created, and the agreement shall be in writing, and shall state the groups of the employees, and a good many of the terms of the agreement are here written forth.

Now it may be that the parties can agree themselves upon some different form of adjustment board than that which would be covered by this agreement. If so there is nothing in the act which is intended to coerce their judgment, or to prevent them from agreeing on any other form of adjustment board. The thought is that if they are unable to set up a board this act will have set forth the main principles which shall be written into such an agreement, so that if, for example, a board of mediation were called in to attempt to bring the parties together, they would say, "Well, now, under the act of Congress there is not very much left to be determined between you as

to issues, because this is the sort of agreement you agreed to write unless you worked out another form."

Mr. Fredericks. Up to the place in the bill here where the board of mediation is provided for, does this bill permit the parties to do anything which they could not do without the bill if the present labor board section of the transportation act and the Newlands Act were repealed?

Mr. Richberg. Pardon my asking the question, but did you ask: "Does the bill permit, or does it compel?"

Mr. Fredericks. I will ask to have the question read.

(The question was thereupon read by the reporter, as above recorded.)

Mr. Richberg. I do not see that it permits the parties to do anything that they would not be able to do if this were not written.

Mr. Fredericks. It gives them no power up to that place that I mention?

Mr. Richberg. No, it adds nothing to their natural powers.

Mr. Cooper. Mr. Fredericks, will you permit me to ask a question?

The Chairman. Mr. Cooper.

Mr. Cooper. But, Mr. Richberg, this bill does provide, does it not, up to that point that railroad boards of adjustment shall be established?

Mr. Richberg. Oh, yes.

Mr. Cooper. And you never had that in any other law?

Mr. Richberg. Oh, no.

Mr. Cooper. Now, in other words, it compels now, according to this law——

Mr. Richberg. That is the reason I asked whether the question was "compelled" or "permitted". As far as it exercises compulsion there is a compulsion in the earlier section, but so far as it permits the parties to do, it permits them to do anything they can. I am not trying to be technical, I am trying to be accurate, Mr. Fredericks.

Mr. Richberg. I want to be accurate, that is all.

Mr. Fredericks. Now does this law up to the time where the mediation board is provided for require the doing of anything which you could not do without it?

Mr. Richberg. Require otherwise?

Mr. Fredericks. Yes.

Mr. Richberg. I think it does; in other words, it requires both parties to make every reasonable effort to make and maintain agreements. It makes that a legal duty upon them.

Mr. Fredericks. How is that enforced?

Mr. Richberg. Well, that is a different question.

Mr. Fredericks. I know it is. I am asking you as a different question.

Mr. Richberg. Well, when you say to require—I do not want to say that it compels in the sense of putting a legal force on them. We have avoided in the bill in any way setting up any penalty sections or any sections for the invocation of any judicial authority, except in the enforcement of an arbitration award. The thought being this, that so far as this law stated duties imposed upon the parties by act of Con-

gress, if they failed to live up to their duties, and there was any action which a court could take consistent with the judicial powers and its limitations, to compel the enforcement of that duty as a legal obligation, it would be subject to enforcement. But the law for such enforcement or compulsion should be developed in the courts, according to the old common law theory of letting the courts develop the law after the obligations are clearly understood, rather than to write into the law a specific line of penalties and writs of enforcement.

Now there are certain limitations upon what I have said, because how far the court, for example, can compel the parties to exert every reasonable effort, what that means, may be a question. But when the transportation act was under consideration by the Supreme Court, the Supreme Court said that very clearly there was no purpose by Congress in passing that act to have the labor board's orders enforced by judicial order.

What we have sought here is not to enforce the orders of any Government tribunal, but to provide a basis upon which it may be possible to enforce legal obligations written by Congress. Now that would present a different question in a judicial proceeding. For example, it may well be that an effort on the part of any group of men of either party, representing either employer or employees, to set up barriers to the free operation of this law, would be in violation of the law, and it would be possible to obtain judicial power to enforce that.

Mr. Fredericks. How?

Mr. Richberg. It depends upon the particular manner in which the law might be violated.

Mr. Fredericks. Well, can you suggest a violation and a remedy?

Mr. Richberg. I can think, for example, of this situation. Suppose under the third paragraph of section 2 which provides that representatives shall be designated by the parties in such manner as may be provided, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other, there should be any effort to influence or control the selection of representatives. I think under those circumstances that any effort on the part of either the employer or the employee to control the operations of the organization of the other, to influence or control the selection of representatives, would amount to either an individual action or a combination of actions—I do not like the word "conspiracy", but let us say for a moment "conspiracy"—to violate this law, and the courts have found remedies for enjoining concerted action and even individual action to violate the law.

Mr. Fredericks. It is rather negative? All of that is negative, is it not?

Mr. Richberg. That is negative; yes. Of course, the theory all through this law has been that we were not seeking, as I said in the beginning, the force of government. Now, I would like to make this suggestion: During the negotiations, with which you say I was familiar—I would like to have it clear that

neither I nor Mr. Thom participated in the negotiations.

Mr. Fredericks. I assumed that you did.

Mr. Richberg. No. I would like to make it clear on behalf of both of us that the representatives of both sides said, "We are solving a practical problem of industry. We are not asking a lawyer to tell us what we should do. We are going to work out a program that we think, as practical men, will work, and when we get through we are going to call the lawyers in and ask them if it is in legal shape", and when they did get through they called in Mr. Thom and myself and said, "Here is what we have worked out. Now if there is anything we have not expressed legally it is up to you to help us express it legally, but it is not up to you to tell us what we want to do. We know that".

Mr. Fredericks. Now let me ask you a general question. In the matter of railroad labor disputes which have occurred in the past few decades there has arisen a volume of law and decision, some statutory and some decision. Now I am asking this as a very general question; you may not be able to answer it, and you may—does this bill set aside or nullify any of that structure of law?

Mr. Richberg. That is a broad question, but I say in all sincerity, to the best of my knowledge, and I have studied this very intensively, I do not believe that there is any provision of either statutory law or law written in the courts which this bill nullifies in any way. Now, I am quite sure that it does not in any way disturb the general law regarding indus-

trial relations, let us say. I am sure that it has no effect upon what I referred to previously as the development of the law of conspiracy in the courts, with which I am not wholly in sympathy, but I will say that I do not think that this bill affects it.

Note: H. R. 7180 is not the bill as finally passed and approved, but it does not differ in any material respect as regards Mr. Richberg's statement from the final Railway Labor Act (May 20, 1926). The wording of this bill and that of the approved Railway Labor Act do not differ in any relevant parts and therefore it may be safely assumed that Richberg's statement would apply as readily to the approved Railway Labor Act as to H. R. 7180.

Senate Committee on
Interstate Commerce
Senate Hearings on S 2306
p. 10—Jan. 14, 1926.

Statement of A. P. Thom
General Counsel, Association
of Railway Executives
Washington, D. C.
Before the Committee on Interstate Commerce
U. S. Senate.

The committee will observe that disputes between carriers and their employees are thus divided into two classes, one relating to grievances and to the interpretation and application of existing agreements as to rates of pay, rules and working conditions. The

other relating to changes in rates of pay, rules, and working conditions. These two classes are dealt with differently in the bill. As to both there is a requirement that there shall be an effort to agree between the parties in conference.

(S. 2306 as introduced into the committee hearings was the same as Railway Labor Act H. R. 9463 which passed both houses of Congress, with a few minor deviations not pertinent to the question at issue.)

S. Rp. 606
69th Congress 1st Session
April 5, 1926.

Report of H. R. 9463 (Railway Labor Act)
Presented by: Mr. Watson.
For: Senate Committee on Interstate Commerce.

"Briefly stated, the bill provides—

First. That it shall be the duty of the parties to exert every reasonable effort to make and maintain agreements.

Second. That any and all disputes shall first be considered in conference between the parties directly interested."

(Other clauses, not relating directly to the question of whether or not negotiation by parties directly is the first step, are given.)

* * * * * * *

The objection that the bill should in express terms forbid strikes during the period of the inquiry by the emergency board and for thirty days thereafter

is successfully met, in the opinion of the committee, by the contention that in forbidding a change in the conditions out of which a dispute arose, one of which and a very fundamental one is the relationship of the parties, it already forbids any interruption of commerce during the period referred to; and if strikes were in express terms forbidden for a given period there might be an implication that after that period strikes to interfere with the passage of the United States mails and with continuous transportation service might be made legal. In the opinion of the committee, this possible implication should be avoided.

* * * * * * *

"The question was consequently presented whether the substitute should consist of a compulsory system with adequate means provided for its enforcement, or whether it was in the public interest to create the machinery for amicable adjustment of labor disputes agreed upon by the parties and to the success of which both parties were committed.

Manifestly it is unwise to commingle the two. One plan or the other should be adopted.

The committee is of the opinion that it is in the public interest to permit a fair trial of the method of amicable adjustment agreed upon by the parties, rather than to attempt under existing conditions to use the entire power of the Government to deal with these labor disputes."

69th Congress 1st Session
Feb. 19, 1926
H. Rp. 328

Feb. 19, 1926
69th Congress 1st Session
H. R. 9463
Presented by: Mr. Cooper.
For: Interstate and Foreign Commerce Committee of the House of Representatives.

During the hearings conducted by the committee it was conceded by all concerned that the enactment of this agreement into law would impose upon the parties to the agreement the moral obligation to settle their differences in the manner provided by law, so as to insure the public continuity and efficiency of interstate transportation service, and to protect the public from the injuries and losses consequent upon any impairment or interruption of interstate commerce through failures of managers and employees to settle peaceably their controversies. There are also legal obligations which would be accepted by and imposed upon the parties by the proposed law that afford further guaranties of improved and continuous transportation service and protection of the public interest therein.

Note: H. R. 9463 was the bill passed by both Houses of Congress which became the R. L. A. upon approval.

Congressional Record
Volume 75, page 5504
March 8, 1932
72nd Congress First Session.

Statement of Mr. La Guardia as to equitable relief under proposed Norris-La Guardia bill and Railway Labor Act.

Mr. Oliver of New York. How does an injunction start the railroads going again, for instance? Is it not a fact that if they start again they must start by using strike breakers? An injunction can stop violence against the property, but it does not affirmatively start the road.

Mr. Beck. In answer to the gentlemen, I would appeal to the truth of history, that all great nation-wide strikes against railroads have been dissolved. The very moment that the nature of the obstruction to interstate commerce was presented to the court, and that, for the obvious reason that those who in many instances have sought to paralyze interstate traffic have never dared to come into court and show that they were not deliberately and willfully interfering with interstate transportation. (Applause.)

Mr. La Guardia. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Pennsylvania.

I just want to call attention to the railroad labor act of 1926 which provides in the very beginning of the act:

> First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements

concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association or by any means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within 10 days after the receipt of notice of a desire on the part of either party to confer in respect to such disputes to specify a time and place at which said conference shall be held.

Mr. Chairman, the law provides every detail for the settlement of disputes. Then if all direct negotiations fail, the law establishes and maintains a per-

manent board of mediation. Now in section 8 of this bill it is provided:

> No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

So that there is a tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The workers could not and would not think of going on strike before all the remedies provided in the law have been exhausted. If the railroads have complied, they would not, as has been suggested, be deprived of any relief which they may have in law or equity.

May 22-25, 1934
Statement of Hon. Joseph B. Eastman
Federal Coordinator of Transportation
Washington, D. C. May 22, 1934
pp. 17-18
Before: House Committee on Interstate and Foreign Commerce.
Hearings on H. R. 7650 (a proposed amendment of the Railway Labor Act).

* * * * * * *

Mr. Wolverton. Would that include truck delivery?

Commissioner Eastman. Yes. The language as it is now would include truck delivery within terminal areas.

Mr. Wolverton. And would that include service that is rendered by railroad companies through trucking facilities?

Commissioner Eastman. So far as the trucking is performed by companies that are under the control of railroads, those companies would be within this definition. If the trucking was done under contract by companies not under railroad control, I assume that they would not be included.

Mr. Wolverton. Will you explain why it should apply in one case and not in the other?

Commissioner Eastman. As Senate bill 3266 was originally drawn, it would have covered the independent companies also. Then the question came up as to whether that would not make a conflict with the provision of the trucking code. The trucking code undertakes to regulate conditions of employment in the trucking business. However, the railroads are not subject to a code, and when you come to a business which they have been conducting directly or indirectly through controlled companies there is always difficulty in determining whether that particular operation comes under the code.

For instance, if a railroad controlled a trucking company which performs terminal service included within railroad service as defined by the Interstate Commerce Act, then the question would arise, in view of the fact that railroads are not subject to

the national Industrial Recovery Act, whether that terminal service performed by a railroad subsidiary was subject to the code. The definition in this bill, H. R. 9689, makes it clear that all transportation service, as defined by the Interstate Commerce Act, whether performed directly by a railroad or indirectly by a subsidiary company, shall be subject to the provisions of the Railway Labor Act.

* * * * * * *

Mr. Wolverton. In other words, it would not include trucking done in connection with railroad companies as rendered by independent contractors?

Commissioner Eastman. I think it would not.

(It is to be noted that H. R. 9861 was the bill finally passed by both Houses amending the R. L. A. H. R. 7650 differs from the final amendment in certain respects which should be noted. A comparison of the amended R. L. A. (June 21, 1934) with the attached portion of H. R. 7650 will show those variations. It is to be remembered that H. R. 7650 was not the bill finally passed, and that Congress very definitely desired the words "other than trucking service" and that these words were used in the final bill. It must also be noted again that this statement of Mr. Eastman was made in reference to the following portion of H. R. 7650 which varies from the final amended R. L. A.:

H. R. 7650 (as found in Hearings before the Committee on Interstate and Foreign Commerce of the House on H. R. 7650. May 22, 1934:

"Definitions.

Section 1. When used in this Act and for the purposes of this Act—

First. The term 'carrier' includes any express company, sleeping-car company, and any carrier by railroad and/or their subsidiaries, subject to the Interstate Commerce Act, including all floating equipment, such as boats, barges, tugs, bridges, and ferries, and any other transportation agencies and facilities used by or operated in connection with any such carrier by railroad, whether operated by such carrier, by railroad or by any other person, firm, or corporation under contract with such carrier, and any receiver, trustee, or other individual or body, judicial or otherwise, when in possession of the business of employers or carriers covered by this Act: Provided however," (these provisos which follow are irrelevant to the issue).

June 11, 1934
73rd Congress 2nd Session
H. R. 9861 (amendment to Railway Labor Act of 1926) H. Rp. 1944
June 11,1934

Presented by: Mr. Crosser.
For: House Interstate and Foreign Commerce Committee.

"The purposes of this bill are:

* * * * * * *

3. To provide for the prompt and orderly settlement of all disputes growing out of grievances and out of the interpretation or application of agreements concerning rates of pay, rules, or working con-

ditions, so as to avoid any interruption of commerce or of the proper operation of any carrier engaged therein."

(H. R. 9861 passed both Houses of Congress and was approved as an amendment to the R. L. A. of 1926.)

In addition to the proceedings had before the Senate and House Committees as reported in the Congressional Record, we also quote statements made before the Senate Committee when the original Railway Labor Act was before Congress for amendment in 1934, as the same are reported in the official publication issued by the United States Government Printing Office entitled:

"To amend the Railway Labor Act. Hearings before the Committee on Interstate Commerce. United States Senate, Seventy-third Congress, Second Session, on S 3266. A bill to Amend the Railway Labor Act approved May 20, 1926, and to provide for the prompt disposition of disputes between Carriers and their Employees. April 10, 11, 12, 18 and 19, 1934."

We first quote excerpts from the Statement of Mr. M. W. Clement, Chairman of the Committee of the Railroads delegated to deal with proposed amendments to the Railway Labor Act, appearing at page 59:

"Another thing, we are to reach into the truck competition feature. The railroads have been seriously hit by truck competition. The railroads, in order to

meet the situation of truck competition and turn the business back to the rails, are gradually going into the collection-and-delivery field, and it is being done more or less by contracting with companies already existing. This may be 10, 15, 20, or 30 percent of their work. They are men that are organized locally within the cities in other organizations, and yet any company engaged in transportation, the contractual relation between the railroads and an existing trucking company brings them into the field. It doesn't work to the benefit of the railroads; it doesn't work to the benefit of the men. Restrictions tend towards inaction. Lack of activity is lack of progress. Progress in the improvement and enlarging of facilities of this country tend towards the employment of from 30 to 40 percent of the labor of the country, and the more you hamper freedom of action in this direction, the more you retard progress.

Now, when you get into this truck field, if you start to restrict the railroads in their truck operations—and I don't think the employees desire it, and the management doesn't desire it—you are gradually going to force us out of that situation in our collection and delivery; then you are going to force the thing onto the highway, absolutely competitive with the railroads."

The Honorable Joseph B. Eastman, Federal Coordinator of Transportation of the Interstate Commerce Commission, followed with a statement before the Senate Committee, from which we quote (pp. 145-146) as follows:

"I shall discuss, first, the amendments to S. 3266 which have been proposed by the railroads:

Section 1, paragraph first: The railroads wish to strike out the words 'any company' in line 10 of page 1. This amendment would confine the bill to the employees of express companies, sleeping-car companies, and railroads. It would eliminate companies, like refrigerator-car companies, which operate facilities or furnish service forming a part of railroad transportation. Most of the illustrations given by Mr. Clement to support his objections to the words 'any company' relate to construction work. The language in the bill would not cover outside companies engaged in such work for the railroads, as I read it. He is right in believing that it would cover trucking companies performing terminal service for the railroads. However, he approves of the wording of the present act, and that includes 'other transportation facilities used by or operated in connection with any such carrier by railroads'. It is plainly broad enough to cover terminal trucking.

The Chairman. As I recall it, he claimed that it would affect their building of bridges and affect their contracts for all kinds of work. Is that your understanding of the definitions?

Mr. Eastman. Well, as I read the definition in the bill, as I have said here, I do not think it would cover such construction work. However, I am about to propose an amendment.

While I believe that the railroad objections are largely without basis, the chairman has made a valid

criticism of the definition of 'carrier' now in the bill, because it requires reference to another act. I can also see difficulties in bringing in trucking operations and certain other operations performed for railroads by outside companies, because of possible conflicts with N.R.A. codes. It is difficult to know just where to draw the line. I am inclined to believe that for the present it would be well not to go beyond carriers and their subsidiaries engaged in transportation. So changed, the definition would read:

The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad——

That, I may say, is some of the language in the Interstate Commerce Act.

The Chairman. Is there some difference, however? Isn't this reference here to parent, subsidiary, and affiliated, new?

Mr. Eastman. Yes. I am confining this now to the railroad subsidiaries because of the possible conflict with N.R.A. codes if we get into the outside field. Going on with that—and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such carrier."

Then followed Mr. George M. Harrison, appearing in behalf of the Railway Labor Executives' Association, whose supplemental statement in relation to the exclusion of Short Lines appears at page 163, and from which we quote as follows:

"The Railway Labor Executives again find themselves in substantial accord with the position of the Federal Coordinator of Transportation upon S. 3266."

* * * * * * *

"The request of the short-line carriers for exclusion from the operation of the law is, we believe without real justification. The employees of those carriers are entitled to the full protection of their right to organize. The experience of the railway labor organizations with such carriers indicates that the short-line employees need protection even more than do the employees of major roads. It was urged that the machinery for settling disputes is not adapted to problems of short-line employees, because craft lines are not hard and fast on railroads with few employees. This objection, however, is without merit. On all large railroads there are employees whose positions overlap craft lines. Their grievances are being handled now, and can be handled under the new law, along one or another craft division. The short-line employees are entitled to, and need, full protection; public protection, too, requires that the disputes arising on short lines be handled promptly and efficiently. From both points of view, it would be unsound and unwise to exclude the short lines from any of the provisions of the proposed act."

A pertinent portion of the statement of the Railroad Management Spokesman is reported in the proceedings at page 168, as follows:

"We believe the express officials to be unduly modest in this contention. The present national board of adjustment in the industry handles disputes from a wide variety of employees, ranging from train-service employees to teamsters and office clerks. Their occupations are not basically different from corresponding railway employment; national officials of the employees now handle grievances and other disputes for both railway and express employees. There is, in fact, much less difference between railway and express operations and occupations, generally, than there is between the various crafts in the express industry. We feel certain that if a representative is selected by the express management to sit upon the national board of adjustment under the new law will be able to contribute at least his full share to a satisfactory handling of disputes arising in groups not within his own industry."

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1942

No. 494

S. C. BIGELOW, as Receiver of Virginia & Truckee Railway (a corporation), and Virginia-Truckee Transit Co. (a corporation),

Petitioner,

vs.

H. A. ANDERSON, Individually and as President and Business Agent of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local No. 533 of Reno, Nevada,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

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PRESAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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STATEMENT.

Petitioner's summary statement of the case does not disclose any evidence or any finding by the District Court that the over-the-highway trucking service operated by the Petitioner was in any way connected with Petitioner's rail carriage.

The District Court's Finding No. 6 (R. 108) was in part as follows:

> "* * * and from that time and thence forward said general trucking service was conducted solely by said Virginia and Truckee Railway."

A labor dispute existed between the Respondent as the representative of the truck drivers, employees of the Railroad Company, and the Petitioner herein.

The Respondent, H. A. Anderson, testified that he had attempted to negotiate concerning the terms and conditions of employment for members of his union who were employees of Respondent (R. 58-67). See, also,

Charles A. Rowan testimony (R. 67-69);
James Pedrojetti testimony (R. 71-72);
Harold Anderson testimony (R. 73);
Paul Davis testimony (R. 74-75).

SUMMARY OF THE ARGUMENT.

AN INJUNCTION SHOULD NOT ISSUE BECAUSE PETITIONER HAS NOT EXHAUSTED HIS REMEDIES AT LAW.

It was the duty of Petitioner, before seeking equity jurisdiction to secure an injunction, both under the

provisions of the Railway Labor Act and the provisions of the National Labor Relations Act, to make every reasonable effort to settle the labor dispute and to make and maintain an agreement concerning rates of pay, rules and working conditions with his employees.

THE INJUNCTION ISSUED BY THE DISTRICT COURT IS VOID FOR THE REASON THAT IT WAS MADE IN THE ABSENCE OF FINDINGS NECESSARY TO SUPPORT SUCH AN INJUNCTION.

The Court's injunction was entered in the absence of an allegation in the Petition and a finding by the Court that the public officers charged with the duty of protecting Petitioner's property are unable or unwilling to furnish adequate protection; and in the absence of any evidence that the Petitioner had made every reasonable effort to settle the labor dispute by negotiation or with the aid of available governmental machinery of mediation and arbitration; that there was no evidence to support the Court's Finding No. 5 (R. 108) to the effect that Appellee had and has no plain, speedy and adequate remedy at law; that there was no evidence introduced to support Court's Finding No. 2 (R. 106) to the effect that great and irreparable injury to Appellee's business and property would result; that there was no allegation and no finding of fact by the District Court and no evidence that unlawful acts had been threatened and would be committed unless restrained; that the injunction is unconstitutional and void as constituting an infringement on the right of personal liberty and is contrary to law.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT IN THE INSTANT CASE IS NOT IN CONFLICT WITH PRIOR DECISIONS OF THIS HONORABLE COURT.

The Decisions cited by Respondent (Pet. pp. 9-10) are not in conflict with the decision of the Court below.

ARGUMENT OF THE CASE AND THE LAW.

AN INJUNCTION SHOULD NOT ISSUE BECAUSE PETITIONER HAS NOT EXHAUSTED HIS REMEDIES AT LAW.

It was the duty of Petitioner herein to make every reasonable attempt to settle the labor dispute existing either under the provisions of the Railway Labor Act, Title 45 U.S.C.A., Sec. 152, Appendix B, or under the provisions of the National Labor Relations Act, Title 29 U.S.C.A., Sec. 158, Appendix C.

A Railway Company in receivership is subject to the provisions of the National Labor Relations Act, 29 U.S.C.A., Sec. 152, providing:

> "Sec. 152, 'Definitions. (1) When used in this act * * * the term "person" includes one or more individuals, partnerships * * *, or receivers.'
>
> "The term '(2) "employer" includes any person acting in the interest of an employer, directly or indirectly. * * *.'"

A Railway Company in receivership is subject to the provisions of the Railway Labor Act. Title 45, U.S.C.A., Sec. 151, providing:

> "First. The term 'carrier' includes any express company, * * *, carrier by railroad, sub-

> ject to chapter 1 of Title 49, * * *, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier'."

See, also,

Burke v. Morphy, 109 Fed. (2d) 572.

See, also, the decision of the Circuit Court below in the instant case:

130 Fed. (2d) Vol. No. 3, Pages 462, 463, Notes 1-2.

The District Court's opinion and decision (R. 82-87), at Page 86, reads:

> "The Receiver is directed to take up the matter of adjustment of wages and hours of said operators of motor trucks and motor busses with said employees and with the Interstate Commerce Commission and the National Railroad Adjustment Board as provided in said Motor Carrier Act and said Railway Labor Act. The Receiver shall also advise the Wage and Hour Division of the Department of Labor of the proceedings by him taken in the matter."

This is in effect a recognition by the trial Court of the fact that the Petitioner herein should have negotiated with his employees and should have exercised his remedies provided by law before seeking equity jurisdiction.

A labor dispute existed between Respondent, representing the truck drivers, employees of the Railroad Company, and the Petitioner herein. This is borne out by the testimony of said employees when they

testified that they were receiving less than the union scale prevalent in the community and were receiving straight time for hours worked in excess of ten hours rather than time and one-half as was paid to employees of other concerns engaged in trucking business in the same community.

H. A. Anderson testimony (R. 58-67);
Charles A. Rowan testimony (R. 67-69);
James Pedrojetti testimony (R. 71-72);
Harold Anderson testimony (R. 73);
Paul Davis testimony (R. 74-75).

All of the truck drivers employed by the Petitioner were members of the International Brotherhood of Teamsters, Chauffeurs, etc., Local No. 533.

S. C. Bigelow testimony, District Court Finding No. 8 (R. p. 109) reading:

"* * * The drivers of said trucks, five in number, are members of said Local No. 533."

The bargaining agent of the truck drivers, namely Appellant, Local Union No. 533, represented the appropriate bargaining unit or group for collective bargaining.

National Labor Relations Board v. Armour and Co., 7 N. L. R. B. 710, 712, and 10 N. L. R. B. 912, 915.

The Railway Labor Act contemplates the preservation of existing crafts and classes of employees as units for collective bargaining.

Order of Railway Conductors of America v. National Mediation Board, 113 F. (2d) 531.

Where only one union has organized truck drivers, they will be included in that bargaining unit despite their eligibility for membership in another union.

Martin Bros. Box Co., 7 N. L. R. B. 88, 92.

The employees of the Appellee Railway Co., other than truck drivers, would not be admissible to membership in Local No. 533. (See H. A. Anderson testimony, R. 58).

Sec. 151 (a), sub. fourth, Title 45, U.S.C.A., provides:

> "* * *. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter."

Truck drivers being a particular class of employees not eligible for membership in a railroad brotherhood, are, therefore, an appropriate unit for the purpose of collective bargaining.

It is apparent that a labor dispute existed which was within the definition of labor dispute, as the same is defined by The Norris-LaGuardia Act, Sec. 113 (c), Title 29, U.S.C.A., Chap. 6, Appendix A.

The foregoing section has been interpreted in the case of

> *Colorado-Wyoming Express et al. v. Denver Local Union No. 13*, F. D. C. Colo. 1940, 35 F. Supp. 155, p. 158.

See, also:

> *Cole et al. v. Atlanta Terminal Co. et al.*, 15 F. Supp. 131, Notes (2-4), p. 132;

Donnelly Garment Co. v. International Ladies Garment Workers Union, 99 F. (2d) 309, Notes (2-4), p. 315;

Consolidated Terminal Corporation v. Drivers, etc. Union, 33 F. Supp. 645, p. 651.

The Respondent was the proper representative of the particular craft or class, namely all of the truck drivers employed by Petitioner. Respondent attempted to negotiate concerning the wages, hours and working conditions of members of Local Union 533. Petitioner refused to negotiate. A labor dispute existed, and the permanent injunction issued by the District Court was, therefore, in violation of the provisions of the Norris-LaGuardia Act, Chap. 6, Title 29, U.S.C.A., Sec. 108, Appendix A.

This section of the act has been construed in the cases of

Donnelly Garment Co. v. International Ladies Garment Workers Union, 99 F. (2d) 309, Notes (7-9), p. 316;

Dean v. Mayo, 8 F. Supp. 73, Notes (1-2), p. 77, 9 F. Supp. 459, affirmed at 82 F. (2d) 554;

Cole et al. v. Atlanta Terminal Co. et al., D.C., Ga. 1936, 15 F. Supp. 131, at 133.

THE RAILWAY LABOR ACT DOES NOT SUPERSEDE OR REMOVE THE PROHIBITIONS OF THE NORRIS-LA GUARDIA ACT IN LABOR DISPUTES.

Assuming, as Appellee does, that the employees of the railway company engaged in main line truck carriage in interstate commerce come within the provi-

sions of the Railway Labor Act, then, in that event, there is nothing contained in said act, either express or implied, that removes the prohibitions of the Norris-LaGuardia Act against granting injunctions in cases involving labor disputes. In the absence of the prerequisite findings of the Norris-LaGuardia Act, no injunction may issue.

The Railway Labor Act was enacted into its final form on April 10, 1936. If Congress had intended that said Act should supersede or modify the Norris-LaGuardia Act, which was enacted March 23, 1922, Congress would have said so in no uncertain language, as was done by Congress in enacting the National Labor Relations Act on March 23, 1932, Title 29, U.S.C.A., Sec. 160, sub. (h), providing:

> "Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of this title. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of this title."

Further, the contention that the Railway Labor Act in no way superseded or modified the Norris-LaGuardia Act is borne out by the hearings on H. R. 7180, set forth in detail in the Appendix G of Petitioner's brief, pages 30-37, at pages 33, 37.

And, the contention is further supported by Congressional Record, Vol. 75, page 5504, as set forth in Appendix G, pages 4-43, of Petitioner's brief, where

the following language concerning the effect of the Norris-LaGuardia Act upon the Railway Labor Act is found:

> "Mr. Chairman, the law provides every detail for the settlement of disputes. Then if all direct negotiations fail, the law establishes and maintains a permanent board of mediation. Now in section 8 of this bill it is provided:
>
> > 'No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.'
>
> "So that there is a tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The workers could not and would not think of going on strike before all the remedies provided in the law have been exhausted. If the railroads have complied, they would not, as has been suggested, be deprived of any relief which they may have in law or equity."

RAILWAY LABOR ACT DOES NOT APPLY TO EMPLOYEES OF RAILWAY COMPANY ENGAGED IN OVER-THE-HIGHWAY TRUCKING SERVICE.

The Railway Labor Act, Title 45, U.S.C.A., Sec. 151, defines "carrier" as including any express company, sleeping car company, carrier by railroad, subject to Chapter 1 of Title 49, U.S.C.A. (this Act being

the Interstate Commerce Act); the pertinent sections of said Act are set forth in Appendix D forming a part of this Brief.

The Interstate Commerce Act, Chapter 1, Title 49, U.S.C.A., does not affect a railway company, or subject it to the regulations of the Interstate Commerce Commission in so far as its over-the-highway trucking service is concerned, and, therefore, the railroad company, in so far as that trucking service is concerned, does not come within the Railway Labor Act.

In its consideration of the Railway Labor Act, being Bill H. R. 9463, a list of the railroad company representatives and a list of the employee organizations represented at the conference concerning the Bill shows that 58 railroads were represented and 20 railroad labor organizations; that all labor organizations represented were unions having a direct connection with railroad operations. No representative of the teamsters union or any truck drivers union, or any other union, other than railway crafts, were represented. See Congressional Record, May 6, 1926, pages 8806-8807.

In further support of the contention that railway employees engaged in over-the-highway trucking service do not come within the purview of the Railway Labor Act, it is interesting to note that a bill was introduced in Congress July 14, 1941 to amend the Railway Labor Act so as to extend the provisions thereof to motor carriers of passengers and property, being Bill H. R. 5314 set forth at length in Appendix E.

In the case of

United States of America, I.C.C. et al. v. American Trucking Associations, 310 U. S. 534, 84 L. Ed. 1345, at p. 1354,

this Honorable Court said:

> "The Commission and the Wage and Hour Division, as we have said, have both interpreted Sec. 204 (a) as relating solely to safety of operation. In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.' * * *."

In view of this language counsel respectfully include in Appendix F hereof, letter from the Secretary of the National Mediation Board set up under the provisions of the Railway Labor Act. Counsel for Petitioner have been furnished a copy of this letter. The Secretary of the National Mediation Board, in this letter, is making reference to that portion of the Railway Labor Act, 49 U.S.C.A., Chap. 8, Sec. 151, sub. First, defining "carriers", wherein the following words are found:

> "(other than trucking service.)"

Counsel for Respondent have been unable to find any reported rulings of the National Mediation Board or the National Labor Relations Board wherein this question has been considered.

THE RAILWAY LABOR ACT DOES NOT PROHIBIT THE RIGHT TO STRIKE OR PEACEFULLY PICKET.

There is nothing contained in the provisions of the Railway Labor Act that deprives the employees of a railroad company of the right to strike or peacefully picket, and an injunction restraining Appellant herein from advertising his grievances by striking or picketing is a violation of his rights as guaranteed by the provisions of the United States Constitution, Article XIV, Sec. 1, and this regardless of the provisions of the Norris-LaGuardia Act.

In the case of

Bakery & Pastry Drivers & Helpers, I.B.T. v. Wohl, 314 U.S. ....., 86 L. Ed. Adv. Sheets, No. 11, p. 781,

at pp. 784 and 785, the Court said:

> "* * * one need not be in 'a labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.
>
> * * * * * * *
>
> "We ourselves can perceive no substantive evil of such magnitude as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or

conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing * * *"

"Mr. Justice Douglas, concurring:

"If the opinion in this case means that a State can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then I think we have made a basic departure from Thornhill v. Alabama, 310 US 88, 84 L ed 1093, 60 S Ct 736. We held in that case that 'the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution.' p. 102.

"But since 'dissemination of information concerning the facts of a labor dispute' is constitutionally protected, a State is not free to define 'labor dispute' so narrowly as to accomplish indirectly what it may not accomplish directly That seems to me to be what New York has done here. Its statute (Civil Practice Act, Sec. 876a) as construed and applied in effect eliminates communication of ideas through peaceful picketing in connection with a labor controversy arising out of the business of a certain class of retail bakers. But the statute is not a regulation of picketing per se—narrowly drawn, of general application, and regulating the use of the streets by all picketeers. In substance it merely sets apart a particular enterprise and frees it from all picketing. If the principles of the Thornhill Case are to survive, I do not see how New York can be allowed to draw that line."

To the same effect, see

Taxicab Drivers Local Union v. Yellow Cab Operators Company, 123 Fed. (2d) 262, at p. 267,

where it is said:

> "Publicizing the fact respecting a labor dispute by pamphlet, banner or word of mouth must now be regarded as a right of free communication guaranteed by the Federal Constitution."

ALLEGATIONS OF APPELLEE'S PLEADINGS AND THE FINDINGS DO NOT WARRANT INJUNCTIVE RELIEF.

The provisions of the Norris-LaGuardia Act applying, there must be an allegation and a finding that the public officers charged with the duty of protecting complainant's property are unable or unwilling to furnish adequate protection. There is no such allegation and no finding to that effect.

Further, there must be an allegation and a finding that every reasonable effort has been made to settle the labor dispute. There was no such allegation and no such finding.

The District Court's finding No. 5 (R. 108), that the Petitioner had no plain, speedy and adequate remedy at law is in error, as there was no evidence in the case of Respondent's inability to respond in damages.

Even assuming that the Respondent does not come within the provisions of the Norris-LaGuardia Act, there must be an allegation and a finding that un-

lawful acts have been threatened, or would be committed, unless restrained, before an injunction could properly issue. There was no such allegation and no such finding.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT IN THE INSTANT CASE IS NOT IN CONFLICT WITH PRIOR DECISIONS OF THIS HONORABLE COURT.

The case of

Virginian Ry. Co. v. System Federation No. 40,
300 U.S. 515, 81 L. Ed. 789,

cited by Petitioner in his Petition, pp. 9, 17, 18, 20, 25, was a case in which the employees sought an injunction to restrain their employer from interfering with or influencing its employees in their choice of representatives, from fostering a company union and to require the employer to recognize and treat with the representatives of its employees. The Court considered the Railway Labor Act and its effect upon the Norris-LaGuardia Act. It held that the requirements of the Railway Labor Act were mandatory upon the employer, requiring him to meet with and confer with the authorized representatives of his employees and to enter into negotiation and settlement of labor disputes. It points out that if negotiation fails either party may invoke the mediation services of the Mediation Board. It holds that where the employer fails in the obligation imposed upon him by the Railway Labor Act a mandatory injunction will

issue to protect and enforce the rights of its employees. In short, the case supports the position of the Respondent here and would indicate that this Respondent could secure a mandatory injunction against the Petitioner herein requiring him to negotiate with his employees.

In the case of

Texas & N. O. R. Co. v. Railway Clerks, 281 U. S. 548, 74 L. Ed. 1034,

cited by Petitioner in his Petition, pp. 9, 26, a decree enjoining the employer from interfering with his employees in their rights of self-organization, was entered. The case is to the same effect as the *Virginian Ry. Co.* Case, supra, and not in conflict with the decision of the Court below.

The case of

American Truck Association v. United States, 210 U.S. 534, 84 L. Ed. 135,

cited by Petitioner in his Petition, p. 10, is merely a holding that the Interstate Commerce Commission is not required to fix qualifications, hours of service, etc. of all employees of a trucking concern. That the Commission is only required to fix the qualifications and hours of service of those employees whose duties relate to the safety of operation. This case is in no way in point here.

It is further respectfully submitted that the rulings of the Railroad Retirement Board in the cases cited by Petitioner's brief, p. 10, have no relevancy to the questions involved herein.

Wherefore, Respondent prays that the Petition for a Writ of Certiorari be denied.

Dated, Reno, Nevada,
November 27, 1942.

Respectfully submitted,
LLOYD V. SMITH,
JOHN S. FIELD,
Attorneys for Respondent.

(Appendices A, B, C, D, E and F Follow.)

Appendix A

LABOR—NORRIS-LA GUARDIA ACT.

(Tit. 29 U.S.C.A. 1941 P.P., Chap. 6, Secs. 101 et seq.)

Sec. 101. Issuance of restraining orders and injunctions; limitation; public policy.

No court of the United States, as defined in sections 101-115 of this title shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. Mar. 23, 1932, c. 90, sec. 1, 47 Stat. 70.

Sec. 102. Public policy in labor matters declared.

In the interpretation of sections 101-115 of this title and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in such sections, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom

of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted. (Mar. 23, 1932, c. 90, sec. 2, 47 Stat. 70.)

Sec. 104. Enumeration of specific acts not subject to restraining orders or injunctions. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. (Mar. 23, 1932, c. 90, sec. 4, 47 Stat. 70.)

Sec. 107. Issuance of injunctions in labor disputes; hearing; findings of court; notice to affected persons; temporary restraining order; undertakings. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined

in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect:

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organizations making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public

officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. * * *

Sec. 108. Noncompliance with obligations involved in labor disputes or failure to settle by negotiation or arbitration as preventing injunctive relief. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration. (Mar. 23, 1932, c. 90, sec. 8, 47 Stat. 72.)

Sec. 113. Definitions of terms and words used in chapter. When used in sections 101-115 of this title and for the purposes of such sections:

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization

of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Appendix B

RAILWAY LABOR ACT.

(Tit. 45 U.S.C.A. 1941 P.P. Chap. 8, Secs. 151 et seq.)

Sec. 151. Definitions; "Railway Labor Act".

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after

hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal

not beyond the mine tipple, or the loading of coal at the tipple.

Act. Aug. 13, 1940, c. 664, 54 Stat. 785, specifically amended section 1532 of Title 26 and sections 151, 215, 228a, 261, and 351 of Title 45, by redefining the terms "employer", "employee", and "carrier". In its report on the bill, the Senate committee approved the policy that coal-mining activities of railroads and their subsidiaries for the purpose of railroad operations, "whether conducted directly by carriers or by subsidiaries of carriers, should for purposes of a social-insurance program and for purposes of labor relations be covered by the system of laws applicable to coal-mining generally rather than the system of laws applicable to the railroad industry". The committee accordingly recommended the enactment of the bill "so as to exclude coal-mining operations from the acts covering the railroad industry * * *"

(Railway Labor Act, Ch. 8 Tit. 45 USCA 1941 P.P. notes p. 239.)

Section 151A. General purposes.

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly set-

tlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. (May 20, 1926, c. 347, sec. 2, 44 Stat. 577, as amended June 21, 1934, c. 691, sec. 2, 48 Stat. 1186.)

Sec. 152. General duties.

First. Duty of carriers and employees to settle disputes.

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives.

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives.

* * * * * * *

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden.

Fifth. Agreements to join or not to join labor organizations forbidden.

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements.

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of con-

ference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

* * * * * * *

Sec. 153. National Railroad Adjustment Board. First. Establishment; composition; powers and duties; divisions; hearings and awards.

There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this chapter.

(Sub-paragraphs b, c, d, e, f and g prescribe the method of selecting representatives on the Adjustment Board, and for their compensation.)

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First Division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten mem-

bers, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second Division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third Division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out

of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

Appendix C

LABOR—NATIONAL LABOR RELATIONS ACT.

(Tit. 29 U.S.C.A. 1941 P.P., Chap. 7, Secs. 151 et seq.)

Sec. 151. Findings and declaration of policy.

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strike or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

* * * * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of

their own choosing, for the purposes of negotiating the terms and conditions of their employment or other mutual aid or protection. (July 5, 1935, c. 372, sec. 1, 49 Stat. 449.)

Sec. 152. Definitions.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151 to 163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Sec. 157. Right of employees as to organization, collective bargaining, etc.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own

choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. (July 5, 1935, c. 372, sec. 7, 49 Stat. 452.)

Sec. 158. Unfair labor practices by employer defined.

It shall be an unfair labor practice for an employer:

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in sections 151-166 of this title, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in sections 151-166 of this title as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title. (July 5, 1935, c. 372, sec. 8, 49 Stat. 452.)

Sec. 159. Representatives of employees for collective bargaining; determination of unit by Board; question affecting commerce, hearing; record on review where commerce questions involved.

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of sections 151-166 of this title, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 160 of this title or otherwise, and may take a secret ballot

of employees, or utilize any other suitable method to ascertain such representatives.

Sec. 160. Prevention of unfair labor practices.

(a) Powers of Board generally. The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Complaint and notice of hearing; answer; court rules of evidence inapplicable. Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing

or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(e) Petition to court for enforcement of order; proceedings; review of judgment. The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the district court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or

setting aside in whole or in part the order of the Board.

No objection that has been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 346 and 347 of Title 28.

(f) Review of final order of Board on petition to court. Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) Institution of court proceedings as stay of Board's order. The commencement of proceedings under subsection (e) or (f) of this section shall not,

unless specifically ordered by the court, operate as a stay of the Board's order.

(h) Jurisdiction of courts unaffected by limitations prescribed in sections 101-115 of this title. When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of this title.

(i) Expeditious hearings on petitions. Petitions filed under sections 151-166 of this title shall be heard expeditiously, and if possible within ten days after they have been docketed. (July 5, 1935, c. 372, sec. 10, 49 Stat. 453; June 25, 1936, c. 804, 49 Stat. 1921.)

Sec. 163. Right to strike preserved.

Nothing in sections 151-166 of this title shall be construed so as to interfere with or impede or diminish in any way the right to strike. (July 5, 1935, c. 372, sec. 13, 49 Stat. 457.)

Appendix D

INTERSTATE COMMERCE ACT.

(Title 49 U. S. C. A., Chapter 1.)

Sec. 1. Regulation in general; car service; alteration of line.

(1) Carriers subject to regulation. The provisions of this chapter shall apply to common carriers engaged in:

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) Transportation subject to regulation. The provisions of this chapter shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply:

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this chapter except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a mail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

Appendix E

77th Congress
1st Session

H. R. 5314

In the House of Representatives

July 14, 1941

Mr. Weiss introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Railway Labor Act so as to extend the provisions thereof to motor carriers of passengers and property.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (1) all of the provisions of sections 151, 152, 154 to 163 of the Railway Labor Act (title 45, ch. 8, U. S. C. Annotated) are extended to and shall cover every motor carrier engaged in interstate or foreign commerce and every motor carrier transporting mail for or under contract with the United States Government, and every driver or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

(2) The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of sections 151, 152, and 154 to 163 of this

title shall apply to said motor carriers and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included with the definition of "carrier" and "employee", respectively, in section 151.

(3) The parties or either party to a dispute between an employee or a group of employees and a motor carrier or carriers may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time. The services of the Mediation Board may be invoked in a case under sections 1 to 8 hereof in the same manner and to the same extent as are the disputes covered by section 155 of this title.

(4) The disputes between an employee or group of employees and a motor carrier or carriers growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on July ...., 1941, before the National Labor Relations Board, shall be handled in the usual man-

ner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 1 to 8 hereof, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of motor carriers and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in sections 151 to 163, or in sections 1 to 8 hereof, shall prevent said motor carriers, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of sections 1 to 8 hereof, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(5) When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent

National Board of Adjustment in order to provide for the prompt and orderly settlement of disputes between said motor carriers, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said motor carriers or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is hereby empowered and directed by its order duly made, published, and served, to direct the said motor carriers and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of sections 151 to 163 and sections 1 to 8 hereof, to select and designate four representatives who shall constitute a board which shall be known as the National Motor Carrier Adjustment Board. Two members of said National Motor Carrier Adjustment Board shall be selected by said motor carriers and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Motor Carrier Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, mem-

bers shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Motor Carrier Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are hereby conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Motor Carrier Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Motor Carrier Adjustment Board by the provisions of sections 1 to 8 hereof. From and after the organization of the National Motor Carrier Adjustment Board, if any system, group, or regional board of adjustment established by any motor carrier or carriers and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days' notice to the other party, may elect to come under the jurisdiction of the National Motor Carrier Adjustment Board.

(6) All cases referred to the National Labor Relations Board, or over which the National Labor Relations Board shall have taken jurisdiction, involving

any dispute arising from any cause between any common motor carrier engaged in interstate or foreign commerce or any motor carrier transporting mail for or under contract with the United States Government, and employees of such carrier or carriers, and unsettled on July 1941, shall be handled to conclusion by the Mediation Board. The books, records, and papers of the National Labor Relations Board and of the National Labor Board pertinent to such case or cases, whether settled or unsettled, shall be transferred to the custody of the National Mediation Board.

(7) If any provision of sections 1 to 8 hereof or application thereof to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby.

(8) There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of sections 1 to 7 hereof.

(9) This Act shall become effective immediately upon enactment.

Appendix F

National Mediation Board
Washington
David J. Lewis, Chairman
George A. Cook
Otto S. Beyer

Robert F. Cole, Secretary

April 30, 1942

Mr. Lloyd V. Smith, Attorney
15 West Second Street
Byington Building
Reno, Nevada
Dear Sir:

Mr. Joseph B. Eastman, Office of Defense Transportation, is asking us to reply to your letter addressed to him under date of March 28, 1942, in which you inquire whether truck drivers operating trucks in interstate transportation, come within the purview of the Railway Labor Act.

By reason of the portion of Section 1 of the Railway Labor Act, which you quote in the fourth paragraph of your letter, this Board has consistently ruled that it has no jurisdiction over companies engaged in trucking service. We are informed that the National Labor Relations Board has handled disputes involving trucking companies, and that various labor organizations having disputes with such companies, have filed such disputes with that Board.

Yours very truly,

(s) Robt. F. Cole,
Secretary.